

**Statement of Joel M. Feder, DO, FACOFP, Captain MC, USN (Ret)  
American Osteopathic Association**

**Presented to the  
House Ways and Means Committee  
Subcommittee on Oversight**

**Hearing on the Impact of Limitations on the Use of Tax-Advantaged Accounts for the  
Purchase of Over-the-Counter Medication**

**April 25, 2012**

Chairman Boustany, Ranking Member Lewis, and Members of the Subcommittee, on behalf of the American Osteopathic Association (AOA), thank you for the opportunity to testify today on the new restriction placed on consumers that choose to use their Flexible Spending Account (FSA), Health Savings Account (HSA), or other tax-advantaged account to purchase over-the-counter (OTC) medications. My name is Joel Feder, I am a retired U.S. Navy Medical Officer and a Board Certified Family Practitioner in Overland Park, KS. I am co-owner and a partner of Overland Park Family Health Partners. My practice includes the full gamut of family medicine services from birth to geriatrics. We are located in a suburban setting serving a significant number of retired and dependent military patients.

I am the past president of the medical staff at Overland Park Regional Medical Center and I am the past president of the Kansas Association of Osteopathic Medicine. I also serve on the adjunct teaching faculty of the University of Kansas School of Medicine, Department of Family Practice and am a clinical preceptor for the Kansas City University of Medicine and Biosciences.

I have treated patients for 36 years. Over the years I have maintained active involvement on numerous medical boards. Today, I am pleased to share with you my personal experience of how the new restriction placed on consumers choosing to use their tax-advantaged account to purchase over-the-counter medications by requiring them to obtain a prescription from their physician has affected my practice. I will also speak to this new restriction being counterintuitive to the concepts of enhancing access to health care and promoting patient-centered care, how it increases costs to the health care system, and how it is a new administrative burden on already over-burdened physicians and their practices.

**Background on the Osteopathic Profession**

The osteopathic profession has a strong and distinguished history of educating, training, and placing physicians in underserved communities. This commitment began in the late 1800's and continues today. Our academic and training model, while not unique to the osteopathic profession, places an emphasis on preparing osteopathic medical students for careers in general physician specialties such as primary care, obstetrics, general surgery, and emergency medicine. Our academic curriculum,

along with a community-based training model, is the primary reason that the profession has enjoyed great success in the production of primary care physicians and general surgeons. Today, 60.5 percent of all osteopathic physicians practice in a primary care specialty. Currently, one in five medical students in the United States is enrolled in a college of osteopathic medicine. We are one of the fastest growing fields in the health care sector.

Currently, there are 26 colleges of osteopathic medicine operating on 34 campuses. We estimate that 2 to 3 new colleges will open in the next few years. Many of our colleges are located in geographic regions with acute physician shortages, such as western Washington, Arizona, and the full span of Appalachia where we have four schools. This commitment to establishing colleges and training opportunities in areas of need is key to meeting the health care needs of underserved communities and is indicative of the profession's commitment to this cause. The nation's colleges of osteopathic medicine currently graduate more than 3,600 osteopathic physicians. In 2013 that number will grow to 4,700 and by 2015 over 5,000 osteopathic physicians will graduate each year. If current trends remain consistent, by 2020 there will be over 100,000 osteopathic physicians in the United States.

### **Establishing a Burden for Physicians and Patients**

The evolving health care delivery system is aimed at keeping patients healthy while providing them with access to quality and cost-effective care. The AOA believes that this goal can best be achieved through a longitudinal model of coordinated care such as the patient centered medical home (PCMH).

Unfortunately, the new FSA OTC restriction is contrary to ensuring access to quality, affordable, and cost-effective care. It requires additional time on a physician's part as well as that of patients which perversely affects lower cost quality care. In my experience, this new restriction on the purchase of OTC medications has necessitated changes in how I am able to treat my patients on a daily basis. I have been forced to make decisions regarding whether or not to charge patients a co-pay if they wish to obtain a prescription. I have also struggled to best determine how to make the time in an already fully scheduled day to fulfill these requests from multiple patients who previously did not require a face-to-face visit.

As a physician, my paramount concern is developing and preserving a strong relationship with my patients. I along with my colleagues strive to empower my patients to make decisions regarding their health while still coordinating their care and visiting with them when necessary. As I work to coordinate the care for my patients and provide them with important consult on their individual health care needs, I aim to put practices into place that allow them to stay out of the office as a result of good health. Physicians and patients should discuss all medications being used, but a written prescription should not always be necessary. This restriction being placed on consumers and burden being imposed on physicians; however, drives a patient to my office for a simple symptom, a patient who might otherwise be efficient in managing their own health at home needing my oversight only when medically necessary. Consequently, access to care is impacted since patients who really need my care are sometimes unable to schedule an appointment since I am now juggling

additional patient visits just to write prescriptions for OTC medications. Unfortunately, this new administrative burden has unnecessarily disrupted the physician-patient relationship in many instances.

In my experience, the majority of the patients that request a prescription for an OTC medication are doing so to address a simple cold or allergy; however, this still requires an appointment slot normally allocated for other patient needs. As a result, my time available to address patients with more substantive health care needs has reduced significantly. On average, I see about 25 patients per day, spending an average 15-20 minutes with each patient - 20 patients that visit my office for traditional care ranging across a wide array of health care needs plus 3-5 patients who are simply requesting a prescription for OTC medication, and in some instances numerous medications. Research has found that an OTC medication is an effective, affordable, and a convenient way for people to address their own health care needs. According to a study conducted by Booz & Co for the Consumer Health Products Association, the use of OTC medication saves the health care system \$77 billion in avoided doctor's visits and diagnostic testing.

### **Placing a Burden on Physician Practices**

My practice is a relatively small practice with five providers including four physicians and one advanced registered nurse practitioner. We have 10 administrative staff working in the office who are extremely busy processing paperwork to keep the office running and filing claims for the patient care my partners and I provide. The additional task of processing requests for appointments for over-the-counter prescriptions is an unnecessary burden. Larger practices might be able to handle this with less disruption; nonetheless, physician practices are negatively impacted by this administrative burden - especially small practices like my own.

Today, physician practices face new demands as required by statute and regulation including the adoption of electronic health records and electronic-prescribing systems, preparation for coding under ICD-10, implementation of quality measures, and adjusting to other changes in the health care delivery system. These additional policies and procedures are important and are primarily beneficial to efficiency as well as to providing improved patient care. However, each new requirement can be quite costly to a physician practice operating as a small business. The accumulated cost and subsequent time spent implementing new systems or procedures has an impact on revenue.

Confusion is occurring amongst physicians, administrative staff, and patients alike because not all over-the-counter medications require a prescription under this restriction. This level of confusion is not helpful in operating a physician practice when a patient calls or arrives to request a prescription. The administrative staff who is often times the first point-of-contact must research the request in order to preliminarily, but not always definitively determine whether a prescription is necessary. A patient may be subsequently turned away or may then visit with a physician only to find that a prescription for that specific OTC medication is not required under this new policy. Ultimately, time and money is lost for the patient, another patient who could have better utilized that time, administrative staff, and by the physician practice as a whole.

In an effort to address this issue, my practice attempted to include all medications requiring a prescription on the same form. Unfortunately, this type of form is not deemed acceptable by tax-preferred accounts to fulfill the requirement under this restriction. We require patients to come in for a face-to-face visit to discuss OTC medications. My practice has determined it is now necessary to begin charging patients a co-pay for this service because of the time it takes away from an ill patient in a given day.

### **Creating New Medical Liability Concerns**

Physicians work hard to establish a trusting relationship with their patients. Generally patients choose to see their physician when they truly believe they need care. This restriction now presents physicians with patients who traditionally would not be seen and who are not accustomed to being seen in order to purchase over-the-counter medications. In my experience, most patients feel inconvenienced and are unhappy with this situation and enter my office with that mindset. As a result, I am potentially placed in a difficult and uncomfortable situation with a patient by possibly refusing to provide a prescription, charging for that service, and/or recommending the patient purchase a different higher cost alternative. For instance, I do not agree with the practice of using OTC medications as a source of energy. A patient might then choose to seek another physician who is willing to write their prescription which further fragments the important physician-patient relationship. The potential friction created in a once trusting relationship can subject a physician to additional liability that has not existed historically.

Although physicians are now typically seeing patients to write prescriptions for products that the Food and Drug Administration (FDA) has already deemed safe and appropriate for direct over-the-counter sale to consumers, the physician is held liable for any potential interactions they might have with other over-the-counter medications my patient is taking which the patient may or may not be willing to disclose. Physicians should make a concerted effort to discuss all medications with patients; however, this sharing of information is delicate and sometimes one-sided. Additionally, the physician is liable for knowing and providing information regarding the potential side-effects or adverse reactions for countless medications that are readily available to any consumer to purchase at will.

### **Conclusion**

In closing, the AOA believes that restricting consumers who choose to use their tax-advantaged account to purchase over-the-counter medications by requiring them to obtain a prescription from their physician is unnecessary and disruptive to efficient care delivery. With that said, the AOA continues to support a patient's ability to utilize tax-advantaged accounts for the purchase of their over-the-counter medications without restriction. Physicians will continue to coordinate quality care for their patients in order to keep patients healthy rather than simply treating them when they are ill. An important element of that coordination is empowering patients to make informed choices benefitting their health without unduly burdening them or their physician.

I would like to thank you and members of the committee for affording me the opportunity today to share my experiences and the AOA's perspective regarding this important topic affecting osteopathic physicians and our patients. The AOA appreciates the work that you do to promote policies that advance patient-centered quality care that is cost-effective for the health care system. We look forward to working with you in the weeks and months ahead to ensure that congressional action fosters strengthening rather than impedes upon the physician-patient relationship.